THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.19055 OF 2006

DATED: 25TH SEPTEMBER, 2006.

Between :

M/s. Swathi Bar and Restaurant,
Markapur, Prakasam District, rep. by
Its Proprietor S. Sambasiva Reddy. .. Petitioner

And

1. The Commissioner of Prohibition & Excise,
   Andhra Pradesh, Hyderabad,
   And 3 others. … Respondents

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ORDER :

The petitioner made an application for grant of licence under the provisions of Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 for the year 2006-07 to run a bar and restaurant in the premises bearing Door No.8/362, Markapur, Prakasam District.

The 1st respondent issued a prior clearance vide proceedings dated 16-6-2006 to run the bar and restaurant at Door No.8/362, College Road, Markapur. However, subsequently, in pursuance of the directions of the Deputy Commissioner of Prohibition & Excise, Nellore, dated 25-8-2006, the Assistant Commissioner of Prohibition & Excise, having measured the distance between the proposed bar & restaurant at Door No.8/362 and Sri Lakshmi Chennakesava Swamy Temple, submitted a report stating that the distance is 92.70 meters. In turn, the Deputy Commissioner of Prohibition & Excise, the 2nd respondent herein, submitted a report dated 11-8-2006 to the 1st respondent for rejection of bar licence in favour of the petitioner and a copy of the said report was also forwarded to the 4th respondent for taking necessary action. In pursuance thereof, the 4th respondent vide proceedings dated 4-9-2006 rejected the application of the petitioner for grant of 2B Bar licence observing that in view of the report of the 2nd respondent he had verified the premises of proposed bar & restaurant and found that the distance between the temple and the bar

& restaurant is less than 100 meters. Aggrieved by the same, this writ petition is filed.

It is contended that the petitioner has been running a bar and restaurant in the very same premises bearing Door No.8/362 of Markapur from the year 2003-04 onwards under valid licence and there has never been any complaint that it is situated within the prohibited distance. It is also contended that the 2nd respondent – Deputy Commissioner of Prohibition & Excise, having personally inspected the premises in question on 6-10-2005 and having found that the same is situated more than 102 meters from the temple, by proceedings dated 7-10-2005 recommended for grant of bar licence in Form-2B for the year 2005-06. In the light of the said report of the Deputy Commissioner of Prohibition & Excise, the learned Counsel for the petitioner contended that since there is no change in the premises, the report submitted by the 3rd respondent – Assistant Commissioner of Prohibition & Excise stating that the distance between the bar premises and the temple in question is only 92.70 meters is incorrect, without any basis and cannot be acted upon.

Having heard the learned Counsel for the petitioner and the learned Government Pleader appearing for the respondents and having regard to the controversy involved particularly keeping in view the distance between the bar & restaurant and the temple was measured by the Assistant Commissioner of Prohibition & Excise behind the back of the petitioner, I am of the opinion that it would be appropriate to direct the respondents to get the distance measured afresh in the presence of the petitioner.

It is to be noted that the explanation to Rule 6 (1) of the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 prescribed the procedure to be followed for measuring the distance. The said explanation may be extracted hereunder :

*"**Explanation :-** For the purpose of this rule*

(a) "Place of public worship" means a temple registered with the Endowment Department, Mosque registered with Wakf Board and Church and includes such other religious institutions, as the State Government may by order specify in this behalf;

(b) "Educational Institutions" means any Primary School, Middle School and High School recognised by the State Government or Central Government, Junior College or any College affiliated to any University established by law.

(c) "High Way" means National High Way or State Highway and shall not include the part of the National Highway or State Highway which passes within the limits of Municipal Corporation, Municipal Council or the Gouthan in any village or Panchayat area.

(d) "Hospital" means any hospital which is managed or owned by a local authority, State Government or Central Government or any private hospital having a provision of at least thirty (30) beds.

The distances referred above shall be measured from the mid-point of the entrance of the proposed Bar premises along with the nearest path by which pedestrian ordinarily reaches to the mid-point of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the institution/place of public worship or to the entrance of the first house of the predominantly residential area.*"*

It is necessary for the respondents to follow the procedure prescribed in the above explanation while measuring the distance and to avoid any controversies, it would be appropriate to take the measurements in the presence of the petitioner.

From the material on record, since it appears that certain complaints were received by the licensing authority that the premises in question is located within the prohibited area, the Writ Petition is disposed of with a direction to the 2nd respondent – Deputy Commissioner of Prohibition & Excise to get the distance

measured following the procedure prescribed in the explanation to Rule 6 (1) of the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 by a qualified surveyor after due notice to the petitioner as well as the complainants. Thereafter, on the basis of such report appropriate orders shall be passed afresh in accordance with law as to the request of the petitioner for grant of Form-2B licence. Such exercise shall be completed as expeditiously as possible preferably within a period of two weeks from the date of receipt of this order.

Writ Petition is accordingly disposed of. No order as to costs.

G. ROHINI, J.

Dt. 25-9-2006
gbs
Note: - CC in 2 days.